

ASSEMBLY BILL

No. 1958

Introduced by Assembly Member Leslie

February 6, 2006

An act to amend Sections 22947.1 and 22947.2 of the Business and Professions Code, relating to computer spyware.

LEGISLATIVE COUNSEL'S DIGEST

AB 1958, as introduced, Leslie. Computer spyware.

Existing law prohibits a person or entity other than the authorized user of a computer owned by a person in California from, with actual knowledge, conscious avoidance of actual knowledge, or willfully, causing computer software to be copied onto the computer and using the software to (1) take control of the computer, as specified, (2) modify certain settings relating to the computer's access to or use of the Internet, as specified, (3) collect, through intentionally deceptive means, personally identifiable information, as defined, (4) prevent, without authorization, an authorized user's reasonable efforts to block the installation of or disable software, as specified, (5) intentionally misrepresent that the software will be uninstalled or disabled by an authorized user's action, or (6) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer. Existing law also prohibits a person or entity who is not an authorized user from inducing an authorized user to install a software component by intentionally misrepresenting that it is necessary for security or privacy or in order to open, view, or play a particular type of content. Existing law prohibits a person or entity who is not an authorized user from deceptively causing the copying and execution on the computer

of software components with the intent of causing an authorized user to use the components in a way that violates any of these prohibitions.

This bill would make nonsubstantive, technical, and conforming changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22947.1 of the Business and
2 Professions Code is amended to read:

3 22947.1. For purposes of this chapter, the following terms
4 have the following meanings:

5 (a) "Advertisement" means a communication, the primary
6 purpose of which is the commercial promotion of a commercial
7 product or service, including content on an Internet Web site
8 operated for a commercial purpose.

9 (b) "Authorized user," with respect to a computer, means a
10 person who owns or is authorized by the owner or lessee to use
11 the computer. An "authorized user" does not include a person or
12 entity that has obtained authorization to use the computer solely
13 through the use of an end user license agreement.

14 (c) "Computer software" means a sequence of instructions
15 written in any programming language that is executed on a
16 computer.

17 (d) "Computer virus" means a computer program or other set
18 of instructions that is designed to degrade the performance of or
19 disable a computer or computer network and is designed to have
20 the ability to replicate itself on other computers or computer
21 networks without the authorization of the owners of those
22 computers or computer networks.

23 (e) "Consumer" means an individual who resides in this state
24 and who uses the computer in question primarily for personal,
25 family, or household purposes.

26 (f) "Damage" means any significant impairment to the
27 integrity or availability of data, software, a system, or
28 information.

29 (g) "Execute," when used with respect to computer software,
30 means the performance of the functions or the carrying out of the
31 instructions of the computer software.

(h) “Intentionally deceptive” means any of the following:

(1) By means of an intentionally and materially false or fraudulent statement.

(2) By means of a statement or description that intentionally omits or misrepresents material information in order to deceive the consumer.

(3) By means of an intentional and material failure to provide any notice to an authorized user regarding the download or installation of software in order to deceive the consumer.

(i) “Internet” means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this subdivision.

(j) “Person” means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) “Personally identifiable information” means any of the following:

(1) First name or first initial in combination with last name.

(2) Credit or debit card numbers or other financial account numbers.

(3) A password or personal identification number required to access an identified financial account.

(4) Social Security number.

(5) Any of the following information in a form that personally identifies an authorized user:

(A) Account balances.

(B) Overdraft history.

(C) Payment history.

(D) A history of *Internet* Web sites visited.

(E) Home address.

(F) Work address.

(G) A record of a purchase or purchases.

SEC. 2. Section 22947.2 of the Business and Professions Code is amended to read:

1 22947.2. A person or entity that is not an authorized user, as
2 defined in Section 22947.1, shall not, with actual knowledge,
3 with conscious avoidance of actual knowledge, or willfully,
4 cause computer software to be copied onto the computer of a
5 consumer in this state and use the software to do any of the
6 following:

7 (a) Modify, through intentionally deceptive means, any of the
8 following settings related to the computer's access to, or use of,
9 the Internet:

10 (1) The page that appears when an authorized user launches an
11 Internet browser or similar software program used to access and
12 navigate the Internet.

13 (2) The default provider or Web proxy the authorized user
14 uses to access or search the Internet.

15 (3) The authorized user's list of bookmarks used to access
16 Web pages.

17 (b) Collect, through intentionally deceptive means, personally
18 identifiable information that meets any of the following criteria:

19 (1) It is collected through the use of a keystroke-logging
20 function that records all keystrokes made by an authorized user
21 who uses the computer and transfers that information from the
22 computer to another person.

23 (2) It includes all or substantially all of the *Internet* Web sites
24 visited by an authorized user, other than *Internet* Web sites of the
25 provider of the software, if the computer software was installed
26 in a manner designed to conceal from all authorized users of the
27 computer the fact that the software is being installed.

28 (3) It is a data element described in paragraph (2), (3), or (4)
29 of subdivision (k) of Section 22947.1, or in subparagraph (A) or
30 (B) of paragraph (5) of subdivision (k) of Section 22947.1, that is
31 extracted from the consumer's computer hard drive for a purpose
32 wholly unrelated to any of the purposes of the software or service
33 described to an authorized user.

34 (c) Prevent, without the authorization of an authorized user,
35 through intentionally deceptive means, an authorized user's
36 reasonable efforts to block the installation of, or to disable,
37 software, by causing software that the authorized user has
38 properly removed or disabled to automatically reinstall or
39 reactivate on the computer without the authorization of an
40 authorized user.

1 (d) Intentionally misrepresent that software will be uninstalled
2 or disabled by an authorized user's action, with knowledge that
3 the software will not be so uninstalled or disabled.

4 (e) Through intentionally deceptive means, remove, disable, or
5 render inoperative security, antispyware, or antivirus software
6 installed on the computer.

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